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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11	HANSEN BEVERAGE COMPANY,	)	Civil No. 08-CV-1166-IEG(WVG)
12	Plaintiff,	)	
13	v.	)	ORDER REGARDING JOINT DISCOVERY
14	INNOVATION VENTURES, LLC,	)	STATEMENT RE: AUGUST 10, 2010
15	Defendant.	)	DISCOVERY CONFERENCE
16		)	(Doc. No. 232)
		)	
		)	

17 Defendant Innovation Ventures and Plaintiff Hansen filed a Joint Dispute Statement  
18 August 6, 2010. (Doc. No. 232.) Defendant complains that Hansen has failed to respond to discovery,  
19 and has improperly redacted information from documents, not produced documents in native  
20 format, and not in the time period for which documents were requested. Hansen asserts that the  
21 discovery production date was mutually extended, that the redaction was proper to protect third  
22 party privacy, and that documents produced were produced in the available formats and responsive  
23 time periods. Defendant's requests are GRANTED in part and DENIED in part as detailed below.

24 I. Defendant's Fourth Set of Interrogatories and Fifth Set of Document Production Requests

25 Defendant served discovery on Plaintiff June 14, 2010. Plaintiff has not responded alleging  
26 that Defendant granted a brief extension. Party stipulations are "recognized as binding on the court  
27 only when approved by the judge." Civ. Loc. R. 7.2(a). The parties did not consult the Court to  
28 approve the alleged extension nor was it memorialized in any written document. Currently, Plaintiff

1 is nearly an entire month late in responding to Defendant's requests and only vaguely indicates  
 2 when it will serve responses. As part of its motion, Defendant asks the Court to order that Plaintiff  
 3 has waived any objections Plaintiff may assert to the interrogatories and document requests. "It is  
 4 well established that a failure to object to discovery requests within the time frame required  
 5 constitutes a waiver of any objection." Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468,  
 6 1473 (9th Cir. 1992) (citing Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981). The Court  
 7 accordingly finds that Plaintiff has waived all objections to the interrogatories and document  
 8 production requests through its complete failure to respond. Plaintiff is ordered to respond to  
 9 Defendant's discovery requests no later than August 23, 2010.

## 10 II. Redaction of Documents

11 Defendant complains that Plaintiff improperly redacted documents in response to  
 12 Plaintiff's Third Set of Document Production Requests. Plaintiff argues that the documents were  
 13 redacted to protect privacy concerns and to exclude non-responsive information. The Court's ruling  
 14 regarding each group of documents is addressed below by Bates number. If not already completed,  
 15 Plaintiff is ORDERED to produce a privilege log no later than August 23, 2010.

### 16 1. Bates Stamp Numbers 50442 - 50446

17 These documents respond to Defendant's request for production number 93<sup>1</sup> to which  
 18 the Court compelled production. Plaintiff claims that these documents were received redacted from  
 19 Knobbe Martens and is unsure if unredacted copies exist. Plaintiff reports further that the  
 20 documents are redacted for reasons relating to a separate ongoing litigation. No later than August  
 21 23, 2010, Hansen is ordered to both inquire if unredacted copies exist and if so, provide them to the  
 22 Court for review.

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 28 <sup>1</sup>Request for Production 93: All documents that refer or relate to the creation of and/or decision to use,  
 or continue to use, the following claim in Hansen's advertising: "It's a wicked mega hit that delivers twice  
 the buzz of a regular energy drink."

1                   2. Bates Stamp Numbers 50687 - 51027

2                   These documents reflect consumer complaints and communications with government or  
3 regulatory bodies.<sup>2</sup> Plaintiff indicates that Bates Numbers H051013 through H 51027 were redacted  
4 by the Government. Plaintiff aptly notes that this Court has already tailored the scope of certain  
5 discovery responses to protect third party privacy rights. (See Doc. No. 201, Interrogatory 14.) The  
6 Court has reviewed the redactions made by Plaintiff and finds them to be appropriate. All identifying  
7 information, such as name or contact information is properly redacted to protect third party privacy  
8 rights. The Court finds that Defendant may be entitled to contact these individuals, however reminds  
9 the parties that discovery cut-off is near and extensions will not be favorably received.

10                  To protect third party privacy rights, Plaintiff and Defendant shall draft a joint letter to all  
11 consumers who submitted health related complaints, allowing these individuals an opportunity to  
12 object to Plaintiff's production of their contact information. Plaintiff shall provide a draft to  
13 Defendant on or before August 23, 2010. Defendant and Plaintiff shall agree on changes and the  
14 letter shall be sent no later than August 30, 2010.

15                   3. Bates Stamp Numbers 58153 - 58158

16                  These documents represent two emails Plaintiff produced as responsive to Defendant's  
17 request for documents relating to Plaintiff's 32 ounce can size.<sup>3</sup> Plaintiff notes that the emails are  
18 redacted for non responsive information. The Court agrees. Defendant's challenge to the redaction  
19 is DENIED.

20                   4. Bates Stamp Numbers 58517 - 58543

21                  These documents represent reports from the American Analytical Chemistry Laboratories  
22 Corporation. The reports were redacted to exclude information that was beyond the scope of  
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24                  <sup>2</sup>Request for Production 89 : Any documents that refer or relate to any adverse events and/or health  
25 issues suffered by any consumers of Hansen's ENERGY DRINKS that were asserted to be caused in whole or  
in part, by the consumption of any Hansen ENERGY DRINK.

26                  Request for Production 91: Documents related to any communication between Hansen or any of its  
27 attorneys or agents, on the one hand, and any governmental, regulatory, or similar body or entity, including  
by way of example and not limitation, the Food and Drug Administration, Federal Bureau of Alcohol, Tobacco  
28 Firearms and Explosives and/or the Federal Trade Commission, on the other hand, that refer or relate to any  
Hansen ENERGY DRINK.

<sup>3</sup>See Requests for Production 77 - 80.

1 “testing or analysis of Hansen energy drinks to determine amount of carbohydrates, sugars or  
 2 calories.”<sup>4</sup> The Court has reviewed the redactions and finds them to be appropriate. Defendant’s  
 3 challenge to the redaction is DENIED.

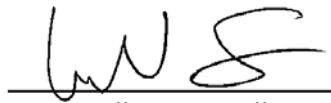
4 III. Temporal Scope of Production

5 Defendant complains that Plaintiff has produced consumer complaints only from March  
 6 2008 to August 2009. Plaintiff responds that prior to 2007, it did not maintain a centralized database  
 7 to store consumer complaints. Plaintiff concedes that it is reviewing its consumer database and  
 8 records to provide all responsive documents in its possession. Plaintiff is ORDERED to produce all  
 9 consumer complaints in its possession. If Plaintiff has previously produced all consumer complaints,  
 10 it must so state in a sworn declaration. Plaintiff must provide a response or declaration on or before  
 11 August 23, 2010.

12 IV. Native Format

13 Defendant contends that Plaintiff failed to produce consumer health complaints in native  
 14 format despite this Court’s February 2010 order. (See Doc. No. 201, Request 89.) However,  
 15 Defendant misinterprets the Court’s order. Plaintiff was under obligation to produce documents in  
 16 native format only if Plaintiff maintains them in native format. Because the complaints were not  
 17 produced in native format, it appears they are not available. To clarify the issue, Plaintiff is ORDERED  
 18 to provide all available native format consumer complaints. Alternatively, if none exist, Plaintiff must  
 19 so state in a sworn declaration. Plaintiff must provide a response or declaration on or before August  
 20 23, 2010.

21  
 22 DATED: August 16, 2010

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 25 Hon. William V. Gallo  
 26 U.S. Magistrate Judge  
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<sup>4</sup>See Request for Production 113.